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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Geographic Partitioning and Spectrum Disag-)
gregation by Commercial Mobile Radio Ser-)
vices Licensees)

WT Docket No. 96-148/

Implementation of Section 257 of the Commu-)
nications Act -)
Elimination of Market Entry Barriers)

GN Docket No. 96-113

To: The Commission

BELLSOUTH COMMENTS

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BELLSOUTH COMMENTS

BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits its comments in response to the Commission's *Notice of Proposed Rule Making*, WT Docket No. 96-148, FCC 96-287 (released July 15, 1996) (*NPRM*), *summarized*, 61 Fed. Reg. 38,693 (July 25, 1996).¹ In the *NPRM*, the Commission requests comments on proposed regulations to expand its geographic partitioning provisions to include all broadband PCS licensees and permit spectrum disaggregation by broadband PCS licensees so as to carry out the Congressional mandate to eliminate entry barriers into the telecommunications market for entrepreneurs and other small businesses.²

¹ References herein are to the paragraph and footnote numbers in the FCC-released version of the *NPRM*, which differ from those in the version published in the Federal Register.

² See Section 257 of the Communications Act, as added by the Telecommunications Act of 1996 (the "1996 Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996).

INTRODUCTION AND SUMMARY

Through this proceeding the Commission proposes changes in its rules that will provide broadband PCS licensees with additional flexibility in utilizing their PCS licenses and spectrum. By extending its geographic partitioning rules and establishing spectrum disaggregation rules for broadband PCS licensees, the Commission anticipates increasing competition by allowing market entry by new players and expediting the provision of broadband PCS service to areas that may not otherwise receive such services.

BellSouth supports the Commission's proposals particularly as they will remove existing barriers to market entry by small businesses and entrepreneurs. These proposals, however, do not provide the maximum flexibility needed to fully meet the Commission's Section 257 mandate to eliminate entry barriers for entrepreneurs; its Section 309(j) mandate to promote "economic opportunities for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women";³ and its Section 332(a) mandate to improve the efficiency of spectrum use, encourage competition, and provide services to the largest feasible number of users.⁴

To achieve maximum flexibility with its geographic partitioning rules and fulfill the objectives of these sections of the Communications Act, the Commission should broaden the definition of the geographic boundaries that may be used for partitioning. If the Commission does not give parties complete freedom to establish their own partitioning boundaries, as it does in cellular, it should, at a minimum, allow use of any established geopolitical boundaries. This would permit partitionees to provide service in well-defined communities of interest that might not

³ 47 U.S.C. § 309(j)(4).

⁴ 47 U.S.C. § 332(a).

otherwise receive service for years, if at all. It would also permit small local businesses to offer PCS in their home communities. Similarly, the Commission should provide maximum flexibility in its build-out requirements and the options available to the partitioning parties. Further, in cases of default, termination or cancellation the Commission should allow partitioned licenses to revert to the initial licensee to ensure continued service to the customers in the subject area.

Similarly, to achieve maximum flexibility with its spectrum disaggregation rules, the Commission should adopt the coverage rules currently in place for 10 MHz BTAs for disaggregated spectrum equaling 10 MHz or less to avoid requiring small businesses to comply with significant coverage requirements in a time frame that at times may be unduly burdensome for such entities. Moreover, the Commission should remove all barriers to entry by adopting flexible rules to permit C and F block licensees to disaggregate their spectrum to any eligible entity, including non-entrepreneurs, subject to the Commission's unjust enrichment rules. Such flexibility will provide small businesses and entrepreneurs with the capital necessary to improve their systems and provide the best service possible to their service areas.

By providing maximum flexibility in the provision of broadband PCS service through geographic partitioning and spectrum disaggregation, the Commission will dramatically increase the level of participation by entrepreneurs and small businesses in the telecommunications market and the level of service provided by such entities. As referenced by the Commission in its *NPRM*, "if an entity has paid fair value for spectrum at auction there should be few if any restrictions in its ability to sell or lease all or part of that spectrum."⁵ Providing maximum flexibility in geographic partitioning and spectrum disaggregation will further facilitate the development of "niche" services and provide for efficient use of the spectrum. Accordingly, BellSouth supports the Commission's

⁵ *NPRM* at ¶ 12 (quoting Statement of Wayne Perry, AT&T Wireless Services, Inc., before the FCC En Banc Hearing on Spectrum Policy, at 3 (Mar. 5, 1996.)).

proposals outlined in its *NPRM*, but encourages the Commission to eliminate unnecessary restrictions within its proposals and thereby provide the maximum flexibility to broadband PCS licensees in the partitioning and disaggregation of their PCS spectrum.

DISCUSSION

I. MAXIMUM FLEXIBILITY IN THE PROVISIONS FOR GEOGRAPHIC PARTITIONING WILL PROMOTE ECONOMIC OPPORTUNITIES FOR A VARIETY OF APPLICANTS AND PROVIDE SERVICE TO THE LARGEST FEASIBLE NUMBER OF USERS

BellSouth supports Commission expansion of its geographic partitioning rules to all broadband PCS licensees. This would remove a significant barrier to entry for entrepreneurs and small businesses. Many small localities and communities would benefit from opening the broadband PCS marketplace to numerous entities that otherwise would not be able to participate in the provision of PCS service. Liberalizing the partitioning rules would speed service to underserved areas and increase competition within the commercial mobile services marketplace. In adopting its rules, however, the Commission should avoid the establishment of unnecessary restrictions on geographic partitioning.

A. The Commission Should Allow For A Broader Definition of Geographic Boundaries To Meet the Needs Of The Largest Number of Users and Areas

The Commission's *NPRM* proposes the partitioning of broadband PCS licenses along county lines, similar to the broadband PCS partitioning rules for rural telephone companies.⁶ This proposal provides small businesses and entrepreneurs with new flexibility to enter into or expand upon their presence in the broadband PCS marketplace. It does not go far enough, however. Initially

⁶ *NPRM* at ¶ 18. While BellSouth's comments are in response to the Commission's proposal that geographic partitioning be done along county lines, as described in paragraph 18 of the *NPRM*, BellSouth supports paragraph 63 of the *NPRM* stating that partitioned license areas would be divided along "geopolitical boundaries."

BellSouth notes that although the Commission states that its geographic partitioning along county lines proposal is in line with the partitioning requirements for rural telephone companies, Section 24.714(d)(1) of the Commission's rules actually provides for partitioning by rural telephone companies that "[c]onforms to established geo-political boundaries (such as county lines)." The reference to county lines is not mandatory, however, but rather illustrative of a sample geopolitical boundary that can be used for partitioning.⁷ As with rural geographic partitioning requirements, the Commission should allow the use of any boundaries the parties choose, or, in the alternative, any established geopolitical boundaries, as the dividing lines for partitioning. Doing so would provide the maximum opportunities for small businesses to provide service to their local communities or areas of interest.

Requiring geographic partitioning by county lines may create areas that are too large to conform to the business needs of small businesses and entrepreneurs. Many small businesses and entrepreneurs may be interested in providing service to the particular communities where they do business, but may have little interest (lack the financial resources) to engage in an entirely new business (*i.e.*, PCS on a county-wide basis). Requiring geographic partitioning by county lines will impose barriers to entry into the broadband PCS marketplace by such entrepreneurs and small businesses and would thus prevent the Commission from complying with its Congressional mandate of eliminating entry barriers for entrepreneurs. Requiring that geographic boundaries be determined solely by county lines does not account for those counties with two or more rural telephone companies providing service to the county. Each rural telephone company should have the same opportunities to enter into the PCS marketplace in their specific service area within the county. Requiring geographic partitioning along county lines would change the current partitioning rules

⁷ See *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 F.C.C.R. 5532, 5597-99 (1994).

for rural telephone companies in mid-stream⁸ and prevent other rural telephone companies from entering into the PCS marketplace.

The Commission currently permits geographic partitioning for providers of Multipoint Distribution Services, General Wireless Communications Services, and 800 MHz SMR services. In the proceedings to adopt geographic partitioning for each of these services, no limitations were placed upon the format for geographic partitioning other than "along geopolitical boundaries."⁹ In the proceeding for 800 MHz SMR services, the Commission stated that geographic partitioning must "conform to established geo-political boundaries (such as county lines) . . ."¹⁰ This reference to county lines, however, is for illustration purposes only and is not intended to represent a bright line test for determining geopolitical boundaries. Establishing a bright line test consisting of county lines for geographic partitioning will limit the ability of many rural telephone companies, small businesses, and entrepreneurs to provide service to their communities and expand upon any services that they may already be providing.

Small businesses and entrepreneurs may be willing and able to provide PCS service in small, isolated communities that might otherwise go unserved for years by a company with a county wide or larger system. Small rural towns, populated islands, and Indian reservations may have local businesses (or even local governments or quasi-governmental entities) that would be willing and

⁸ See note 7 *supra*.

⁹ See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, *Report and Order* 10 F.C.C.R. 9589, 9614 (1995); *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *Second Report and Order*, 11 F.C.C.R. 624, 646 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rule Making*, 11 F.C.C.R. 1463, 1576 (1995) ("800 MHz SMR").

¹⁰ 800 MHz SMR, 11 F.C.C.R. at 1576.

financially able to construct a highly localized, low-cost, PCS network. Such communities may receive low priority however, from a company building a system to serve an area encompassing one or more whole counties. Thus, allowing partitioning on the basis of geopolitical boundaries below the county level will benefit not only entrepreneurs but also countless small communities that may otherwise not receive PCS service for many years, if ever. In the cellular context, the service that is often compared with broadband PCS, maximum flexibility is provided for geographic partitioning by solely requiring the partitioning parties to enter into a contract defining the cellular geographic service area ("CGSA") of the partitionees system and any ceded expansion rights.¹¹ There is no limitation as to the area or boundary that must be followed for geographic partitioning.

Accordingly, it would serve the public interest, convenience and necessity to adopt a flexible approach to geographic partitioning without any limitation on the geo-political boundaries that may be used for partitioning broadband PCS licenses. Today's modern mapping software is sophisticated and flexible enough to accommodate any combination of geographical boundaries. Ideally, broadband PCS licensees should be provided with maximum flexibility to divide their licenses on any mutually agreeable basis, as is the case in cellular.

If there must be limits on the parties' freedom to draw their own lines, the Commission should allow the use of any established geopolitical boundary, including, but not limited to, county, city, town, village or township lines; Indian reservation boundaries; bodies of water or mountain ranges; or economic area ("EA") boundaries.¹² No maximum or minimum size should be imposed on such geographic areas because geopolitical boundaries differ widely from state to state and small

¹¹ See 47 C.F.R. § 22.947(b).

¹² EA boundaries were established by the U.S. Department of Commerce's Bureau of Economic Affairs. These boundaries are based on local area economic activity, local interindustry economic relationships and internal population movements such as commuting patterns.

businesses serve communities of all sizes. If the Commission does adopt rules for the use of county lines or other specific geopolitical boundaries for geographic partitioning, it should also permit waivers of its rules in situations where a service area does not naturally fall along the prescribed rigid geopolitical boundaries.

B. In Cases of Termination Or Cancellation Of A Partitionee's Authorization, Geographically Partitioned Licenses Should Revert Back To The Initial Licensee To Ensure Continuous Provision of Service

In cases of default, abandonment, cancellation, or surrender of a partitioned license by a partitionee, the partitioned license should revert to the initial licensee, upon request by the licensee, and be reabsorbed as part of the initial license if such agreements are included in the contract between the parties during the first 10-year license term for the geographic area. Providing for such reversion will assure the community being served by the partitionee that in the unlikely event the partitionee cannot continue to provide service, the licensee that initially ensured provision of service will step back into the shoes it once wore.

The concept of reversion to the geographic licensee is not foreign to the Commission. Recently, in its wide-area 800 MHz SMR proceeding, the Commission adopted rules providing that spectrum within an 800 MHz SMR licensee's spectrum block that the Commission recovers from an incumbent licensee through default, failure to construct or that otherwise loses its license will revert automatically to the geographic licensee in the incumbent's service area.¹³ In the 900 MHz SMR context, the Commission recently adopted rules providing any stations licensed to incumbents

¹³ 800 MHz SMR, 11 F.C.C.R. at 1501.

that are not constructed or placed in operation will revert automatically to the geographic MTA licensee for that channel block.¹⁴

Similarly, in the paging context, the Commission has recently proposed rules providing for geographic licensing for all paging channels that are licensed on an exclusive, non-nationwide basis. Incumbent licensees in geographic areas will be permitted to operate as previously authorized. Should an incumbent fail to construct, discontinue operations or otherwise has its license terminated by the Commission, however, the Commission proposes that the incumbent's authorization revert automatically to the geographic licensee.¹⁵

By permitting partitioned licenses to revert to the initial licensee upon default, abandonment etc., by the partitionee, BellSouth is not proposing that the original licensee maintain a continuing obligation with respect to the entire initial geographic area, including the partitioned area. Rather, BellSouth is proposing that, should the original licensee determine that it desires to provide service in a portion of its original license area that the partitioned licensee cannot serve, it should be able to do so rather than delaying further service to the public, which would occur if the partitioned license had to be surrendered to the Commission for further disposition. The initial licensee would then reassume its original build-out requirements for its service area.

Allowing the parties to agree for reversion of the abandoned territory back to the initial licensee would ease the administrative burdens on the Commission by not requiring the

¹⁴ *Amendment of Parts 2 and 90 of the Commissions Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-553, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 F.C.C.R. 6884, 6906 (1995). See also 47 C.F.R. § 90.663(b)(1995).

¹⁵ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Notice of Proposed Rule Making*, 11 F.C.C.R. 3108, 3113 (1996).

establishment of procedures to dispose of the partitioned license, establishment of new renewal periods, or a new construction periods. Reversion to the initial licensee would also be in the public interest because it promotes continuous service to communities that may already lack the extensive list of services available in urban areas.

C. Build-Out Requirements For Partitionees Should Provide Two Real Coverage Options Based On The Initial Licensee's Build-Out Abilities

To ensure the rapid deployment of service to the public by broadband PCS licensees, the Commission established build-out requirements for owners of 30 MHz and 10 MHz broadband PCS licenses. In its *NPRM*, the Commission proposed two options for extending these build-out requirements to geographically partitioned PCS licenses.¹⁶ Under the first option, a partitionee is obligated to satisfy the same build-out requirements as the original licensee of the partitioned area. This requirement would apply without regard to when the partitionee acquired the license. The second option is available when the original licensee has met its five-year build-out requirements and certifies that it will meet the ten-year coverage requirements for its entire license area. Upon such certification, partitionees are only required to satisfy the substantial service requirements for renewal expectancy for its partitioned area by the end of the original ten-year license term.

The Commission's proposal fall short of realistically providing partitionees with coverage options. If the initial licensee has not met its five-year build-out requirement at the time of the proposed partitioning, the partitionee does not have a choice between option 1 or option 2. It *must* choose option 1 because option 2 is not available to it since the initial licensee has not reached its five-year build-out requirement. Accordingly, BellSouth encourages the Commission to further liberalize its build-out options, by actually providing partitionees a choice, to be mutually agreed

¹⁶ *NPRM* at ¶¶ 32-34.

upon by the parties, between option 1 as proposed by the Commission and a revised option 2. In the event that the parties cannot arrive at a mutual agreement between the two options, option 1 should be the default option used by the parties.

Under the revised option 2, the parties will mutually agree that if the initial licensee in a geographic area is willing to certify to the Commission that it will meet both the five-year and the ten-year build-out requirements, the partitionee will only be required to demonstrate that they have met a modified build-out requirement, instead of substantial service, to their partitioned area at the ten-year deadline. This modified build-out requirement should be more flexible than the current requirements for initial licensees (one-third coverage in five years, two-thirds coverage in ten years) yet more measurable, such as based on pops, than "substantial service." Using a build-out requirement based on pops would ensure more coverage to the geographically partitioned area rather than using the substantial service standard which is loosely defined as "sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal."¹⁷ Implementing this revised option will give partitioners and partitionees a real choice between options for complying with the Commission's coverage requirements, and thus promoting rapid build-out in both partitioned geographic areas.

The Commission established coverage requirements for broadband PCS licensees to ensure the rapid deployment of service to the public.¹⁸ Given the high price paid by most PCS licensees, it is highly unlikely that a licensee would not comply with its coverage requirements and run the risk of having its PCS license revoked. Partitioned license holders, who will mostly be small businesses and entrepreneurs, have the same incentive to avoid loss of licenses for which they have paid market

¹⁷ 47 C.F.R. § 24.16.

¹⁸ *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Memorandum Opinion and Order*, 9 F.C.C.R. 4957 (1994).

value. Establishing flexible build-out requirements that truly give partitionees an option for their coverage requirements will further the Commission's goal of expediting the provision of service to areas that otherwise may not receive it as quickly.

II. THE COMMISSION'S PROVISION OF SPECTRUM DISAGGREGATION MUST BE FLEXIBLE ENOUGH TO IMPROVE THE EFFICIENCY OF SPECTRUM USE, ENCOURAGE COMPETITION, AND ELIMINATE BARRIERS TO ENTRY

BellSouth applauds the Commission's decision to revise its rules providing for the assignment of licensed PCS spectrum by broadband PCS licensees that have met their five-year construction requirements only after January 1, 2000.¹⁹ Permitting the disaggregation of spectrum at any time by broadband PCS licensees encourages more efficient use of the spectrum. It also fosters increased competition by providing many opportunities to small businesses and entrepreneurs who were not able to financially participate in the PCS auctions. BellSouth also encourages the Commission to remove its five-year build-out requirement and thus remove one of the last barriers to entry that small businesses and entrepreneurs must face.

Further, BellSouth encourages the Commission to not establish any limitations on the amount of spectrum that can be disaggregated, provided that the original licensee maintain at least 1 MHz of its originally licensed spectrum. As previously referenced and as quoted by the Commission, "if an entity has paid fair value for spectrum at auction there should be few if any restrictions in its ability to sell or lease all or part of that spectrum."²⁰

A. Relaxing The Coverage Requirements For Disaggregated Spectrum Would Encourage The Development Of "Niche" Markets And Efficiency In Spectrum Use.

¹⁹ 47 C.F.R. § 24.229(d).

²⁰ *NPRM* at ¶ 12 (quoting Statement of Wayne Perry, AT&T Wireless Services, Inc., before the FCC En Banc Hearing on Spectrum Policy, at 3 (Mar. 5, 1996.)).

As discussed above, both 30 MHz and 10 MHz broadband PCS licensees are subject to five-year and ten-year coverage requirements as a condition to maintaining their licenses. To avoid anti-competitive incentives to disaggregate spectrum and engage in spectrum warehousing, the Commission proposes two construction build-out options for entities receiving disaggregated spectrum that do not already possess a broadband PCS license in the same geographic service area.

Under the first option, which is similar to the first option for partitioned licenses, a new licensee holding disaggregated spectrum who is not already a PCS licensee in the geographic market would be obligated to satisfy the same construction requirements as the original licensee, without regard for when it acquired the disaggregated spectrum.²¹ Under the second option, the Commission proposes to permit the licensee of disaggregated spectrum to satisfy the five-year build out requirements by the end of the original ten-year term only if the initial licensee has met its five-year build-out requirement and certifies that it will meet the ten-year construction requirement by the end of its license term. The Commission did not propose new construction requirements for disaggregates already possessing a broadband PCS license in a geographic service area.

BellSouth supports the Commission's goals of ensuring the rapid provision of service and avoiding spectrum warehousing. Nevertheless, these goals can be met with rules that are more liberal than those proposed by the Commission but that still ensure rapid provision of service without engaging in anti-competitive behavior. Specifically, BellSouth proposes establishing build-out requirements for disaggregates based on the amount of spectrum they are obtaining. *If* the disaggregated spectrum is 10 MHz or less, the Commission should apply the same coverage rules that apply to licensees of 10 MHz BTAs, without regard to whether the original license is for 30 MHz or 10 MHz of spectrum.

²¹ *NPRM* at ¶ 52.

Requiring disaggregated license holders who obtain small amounts of spectrum for “niche” services to comply with the significant build-out requirements imposed on a 30 MHz licensee would be contrary to the Commission’s goals of removing barriers to entry and encouraging efficient use of the spectrum. The initial licensee is already required to meet certain coverage requirements based on the size of the spectrum it acquired.

B. The Commission’s Proposal Regarding Disaggregation of Spectrum on the Entrepreneurs Blocks Builds Further Barriers to Entry and Expansion by Small Businesses and Entrepreneurs

Despite its statements regarding the benefits of licensee flexibility obtained by spectrum disaggregation and its desire to lift barriers to market entry for small businesses and entrepreneurs in the telecommunications market, the Commission’s proposed rules permitting entrepreneur block licensees to disaggregate spectrum at any time only to similarly qualified parties, or to non-entrepreneurs after a five-year holding period, create a rigid disaggregation system with more barriers to entry than those removed.

BellSouth supports the Commission’s unjust enrichment provisions applicable to licenses obtained by small businesses and entrepreneurs through competitive bidding procedures.²² These provisions were adopted to discourage sham applications by entities holding themselves out as small businesses and obtaining premium PCS licenses at discount prices, only to resell the license at highly inflated prices, thus recreating the same sham application process previously encountered in the cellular context. The Commission, however, has let its concern for preventing unjust enrichment obstruct the needs of small businesses and entrepreneurs for developing capital to build out and enhance their systems to be competitive with other mobile service providers in their areas of service.

To provide maximum flexibility in the disaggregation of spectrum, the Commission should

²² 47 C.F.R. § 1.2111.

permit entrepreneurs to disaggregate a portion of their spectrum and assign that spectrum to any party eligible to hold a PCS license. If the new holder of the disaggregated spectrum does not qualify as an entrepreneur or small business, the Commission should apply its provisions against unjust enrichment by establishing recovery mechanisms that go into effect upon consummation of a proposed disaggregation transaction. Similar to the Commission's proposed requirements for repayment by entrepreneurs that would not qualify for the same level of benefits as the disaggregating licensee, the Commission can establish repayment requirements for non-entrepreneurs.

The value of the license can simply be prorated and repaid by the non-entrepreneur based on the percentage of spectrum disaggregated. For example, if an eligible entrepreneur sold 10 MHz of its 30 MHz C block license to a non-entrepreneur buyer, the buyer would have to immediately repay 1/3 of any bidding credits the seller received plus 1/3 of the outstanding interest and principal; the original licensee's interest and principal balance would, correspondingly be reduced by 1/3.²³ The end result would consist of an entrepreneur that has obtained capital to enhance its existing system; a non-entrepreneur that can either expand its existing services within a geographic area or provide competition in a given market without any credits/installment benefits; and, avoidance of unjust enrichment by the non-entrepreneur disaggregatee. Such a provision is clearly in the public interest and thus should be adopted by the Commission.

Entrepreneurs and small businesses may find that disaggregating their spectrum will be the most efficient method for obtaining the capital needed for the cost of construction of their systems and marketing their services thus, enabling entrepreneurs to build systems that will effectively

²³ A similar provision should apply to geographic partitioning by entrepreneurs to non-entrepreneurs using the percentage of pops partitioned as the basis for determining the prorated rate of the value of the license to be repaid by the non-entrepreneur.

compete with other mobile service providers in their area of service. No logical reason exists for the five-year barrier established by the Commission on the sale by entrepreneurs to non-entrepreneurs. It would appear illogical even if it were a two or three-year barrier.

While BellSouth believes that rigid application of the holding period governing transfers to non-entrepreneurs would unnecessarily restrict entrepreneurs' ability to disaggregate spectrum, the Commission may conclude that applying the holding period to a portion of the entrepreneur's spectrum is needed to avoid eviscerating the holding period rule. BellSouth suggests in this regard, that an eligible entrepreneur be required to continue holding a minimum of 25% of its originally licensed spectrum for the holding period specified in Section 24.839(d)(2) of the Commission's rules. If the entrepreneur licensee disaggregates 50 percent or more of its spectrum, however, they must qualify as an entrepreneur without regard to the "25% rule" and "50% rule" on ownership that would otherwise permit nonattributable equity to be held by non-entrepreneurs.²⁴ Thus, an entrepreneur would be able to disaggregate substantial spectrum to non-entrepreneurs during the holding period only if its remaining spectrum is owned by an entity that is a fully qualified entrepreneur in its own right.²⁵ Under these circumstances, disaggregation to non-entrepreneurs would actually *increase* the ownership of licenses by entrepreneurs.

The distinctions established by the Commission for disaggregation between entrepreneurs and non-entrepreneurs will hinder rather than advance the deployment of PCS services by entrepreneurs. The Commission should avoid adopting different requirements for entrepreneur block licensees and non-entrepreneur block licensees and continue to remove barriers to market entry for

²⁴ See 47 C.F.R. § 24.709(c)(3)-(6).

²⁵ However, the control group must still own 100% of the entrepreneur license rather than a smaller portion allowed under the 25% or 50% attribution rules.

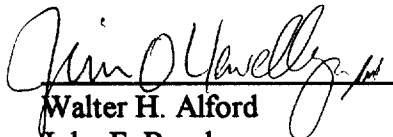
entrepreneurs by providing mechanisms for entrepreneurs to obtain the capital necessary to construct and improve their PCS systems and become a viable competitor in their service area.

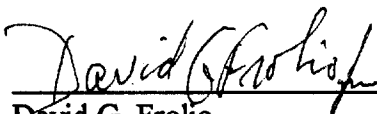
CONCLUSION

BellSouth supports the Commission's proposal to provide for geographic partitioning and disaggregation of spectrum by broadband PCS licensees. For the reasons stated above, BellSouth encourages the Commission to further remove existing barriers to competition and market entry by entrepreneurs and provide the maximum flexibility in the rules adopted for geographic partitioning and disaggregation of spectrum.

Respectfully submitted,

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I, M. Jeanette Trigeiro, hereby certify that I have, this 15th day of August, 1996, served a copy of the foregoing "BellSouth Comments," by First-Class United States Mail, postage pre-paid to the following:

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